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OFFICE OF PETITIONS

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| In re Application of | : | |
| Raman et al. | : | |
| Application No.: 10/758689 | : | DECISION ON |
| Filing or 371(c) Date: 01/15/2004 | : | PETITION |
| Attorney Docket Number: 1864.004US1 | : | |

This is a decision in response to the "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," filed November 9, 2007. The petition is properly treated under 37 CFR 1.181.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action. Mailed November 3, 2006. The Notices set a three (3) month period for reply. No reply having been received, the application became abandoned February 4, 2007, A Notice of Abandonment was mailed May 18, 2007.

Petition under 37 CFR 1.181

Applicant files the presnet petition and requests withdrawal of the holding of abandonment because the "Notice, mailed March 11, 2006 was not received." Applicant states that a search of the file jacket and docket records indicates that the Office communication was not received. Applicant alsI files a copy of the docket record where the non-received Office [communication] would have been entered had it been received.

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, provides

In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133). To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions). (Emphasis supplied)

MPEP 711.03(c)

Analysis

A review of Office records reveals that the Office action, mailed November 3, 2006 was mailed to a correspondence address of record. Office records also reveal that the Office action was returned as undeliverable to this Office by the United States Post Office on November 6, 2006. Office records further reveal that a Change of Correspondence Address was filed on July 13, 2007.

In view of the above, there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

The petition to withdraw the holding of abandonment is dismissed without prejudice. Applicant should file a request for reconsideration of petition and include a statement as to when the correspondence address change was effectuated.

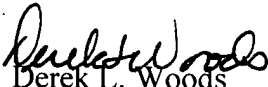
Further correspondence with respect to this matter should be addressed as follows:

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By FAX: (571) 273-8300
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Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.


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